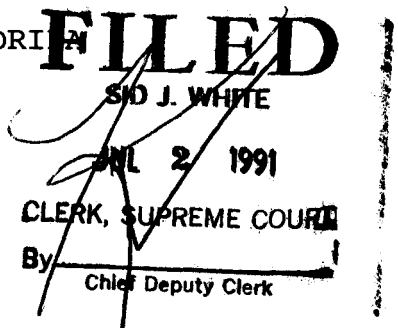
D.A. 11-7-91 047

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 77,468



CITY OF BOCA RATON, FLORIDA
Appellant,
Cross Appellee,

v.

THE STATE OF FLORIDA, et al.,
Appellee,
Cross Appellant.

On Appeal from a Bond Validation in the Circuit Court in and for Palm Beach County, Florida
Case No.: CL 90-10167 AN

CROSS-REPLY BRIEF OF APPELLEE, CROSS APPELLANT

DAVID H. BLUDWORTH,
STATE ATTORNEY
Fifteenth Judicial Circuit
LESLIE M. RITCH
Assistant State Attorney
Fla. Bar. # 396745
The Harvey Bldg., Suite 800
224 Datura Street
West Palm Beach, Fla. 33401

TABLE OF CONTENTS

CITATION OF AUTHORITIES

PREFACE

For purposes of this Brief, the Appellant, Cross Appellee, City of Boca Raton, Florida, will be referred to as the "City"; the Appellee, Cross Appellant, State of Florida, will be referred to as the "State"; the Appellee, Cross Appellant, Astral Investments, Inc., will be referred to as "Astral"; and the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, will be referred to as the "Trial Court".

Further, the $21,000,000 Special Assessment Improvement Bonds, Series 1990 (Visions 90 Project) will be referred to as the "Bonds".

The abbreviations "App." shall refer to the Appendix to the City's Initial Brief; "App-S." shall refer to the Appendix to the State's Answer Brief; "V." shall refer to the Volume Number; "T." shall refer to the Index Tab Number; and "P." shall refer to the Page Numbers.

The State does not wish to belabor the points made in the Answer Briefs which were previously submitted, but will rather rely upon those Briefs and incorporate those points here and will only briefly comment upon the issues raised in the City's Reply Brief.

SUMMARY OF ARGUMENT

POINT I.

The City's proposed ad valorem "assessment", which is to be used to pay the Bonds the City is seeking to have validated, is in reality an ad valorem tax.

This tax is to be assessed against parcels of property on the sole basis of the parcels' values; the amount of this tax which is to be assessed against these parcels will vary from year to year; and this tax will not be assessed proportionate to special benefits which may or may not inure to the various parcels from the 25 separately identified improvement projects.

This ad valorem tax must be subject to all the constitutional conditions and restricts imposed upon the levy of such taxes.

POINT II.

The City's decisions to provide exclusions from assessment for residential parcels and houses of worship, and to provide Deferrable Assessments for only certain commercial parcels were arbitrary, unreasonable and violative of "equal protection" guarantees.

ARGUMENT

POINT I

THE AD VALOREM ASSESSMENT PROPOSED BY THE CITY TO PAY FOR THE BONDS IS NOT A VALID SPECIAL ASSESSMENT, BUT RATHER AN AD VALOREM TAX.

The ad valorem methodology which the City has chosen to use as the basis for apportioning the assessments, from which the Bonds are to be paid, works as an ad valorem tax rather than as a special assessment.

This methodology relies on property value as the sole criterion by which to determine each parcel of property's annual share of the "assessment".

Contrary to the City's assertions, this situation is unlike the one presented in the case of City of Naples v. Moon, 269 So.2d 355 (Fla. 1972). While it is true that in the City of Naples case an apportionment methodology which was based on the assessed value of property was approved, property value was not the sole criterion upon which the apportionment was based. Rather, after the assessed value of the property was determined, it was then multiplied by a benefit factor to determine the amount of the assessment on each parcel of property.

In the instant case, no such benefit factor will be used. Instead, property value will be the only factor considered. This strongly indicates that this is purely an ad valorem tax.

In addition, it is obvious that in the case at hand a parcel's share of the annual assessment will vary from year to year, depending upon the parcel's assessed value, whereas in a typical

special assessment situation, a parcel's share of the assessment would be fixed at the time the initial levy is made.

This Court, in Fisher v. Board of County Commissioners of Dade County, 84 So.2d 572 (Fla. 1956), when speaking to the issue of fluctuations in annual assessments against property in proportion to the assessed valuation of the property, stated that

> Nothing could be more typical of pure ad valorem taxation.

As part of its Visions 90 Program, the City went to great lengths to separately identify 25 distinct improvement projects. (App.:P.28-32) The City also outlined six basic categories of Improvements to be made in these projects. (App.:P.7) The City detailed the different, non-contiguous, locations of the projects, and the different combinations of and degrees of the Improvements to be made in these different locations. (App.:P.28-32)

The City also went to great lengths to identify and describe the six major categories of benefits to be received from these Improvements. (App.-S.:V.II T.2 P.II-6 through II-13, IV-6) Even assuming, arguendo, that all these benefits are available, not all of the parcels subject to assessment need or can utilize all of these benefits.

While it is evident that the City spent a lot of time, effort and money to research, identify and describe the Improvements, locations, projects and benefits involved in the Visions 90 Program, it is uncontroverted that these factors are not taken into consideration in the ad valorem apportionment methodology proposed by the City. Neither are other factors which may affect a parcel's

value and which are unrelated to the Visions 90 Program taken into consideration.

At the risk of redundancy, it must again be pointed out that the sole basis upon which a parcel's annual share of the assessment is based, in the case sub judice, is the parcel's assessed value, as is the case with pure ad valorem taxation.

The City would have this Court believe that all the distinctions and differences which it had previously so painstakingly drawn can all be lumped together for assessment purposes because property values alone will reflect all these distinctions and differences. This claim is unreasonable on its face, and cannot be substantiated by anything in the Trial Court's record.

The opinion of the City's consultant, whether in his testimony at the Validation Hearing, or in his Benefit Evaluation Report is just that - his opinion.

These opinions are an insufficient foundation upon which to base an ad valorem apportionment methodology, according to this Court's decisions in Fisher v. Board of County Commissioners of Dade County, Id, and St. Lucie County-Fort Pierce Fire Prevention and Control District v. Higgs, 141 So.2d 744 (Fla. 1962).

Furthermore, because of the diverse and distinct nature and location of the projects, and the different types and degrees of benefits alleged to be received by the various parcels subject to assessment, the City should have determined the amount of special benefits to inure as a result of each project rather than broadly

and simply proclaiming that each parcel subject to assessment will be specially benefitted.

The City cannot simply declare the existence of special benefits where none, in fact, exists. South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380, 383 (Fla. 1973). Neither may the City assume the existence and amount of special benefit to each parcel from these very different projects. Assumption of special benefits is only permitted where the improvement by its nature is designed to specially benefit abutting property or property within the protective proximity of the improvement. City of Treasure Island v. Strong, 215 So.2d 473 (Fla. 1968); City of Hallandale v. Meekins, 237 So.2d 318 (Fla. 4th DCA 1970), aff'd 245 So.2d 253 (Fla. 1971).

When all these factors are considered together, it is apparent that the City's "assessment" is actually an ad valorem tax and must be subject to the constitutional restrictions imposed upon such taxes by Article VII, Sections 9(b) and 12 of the Florida Constitution (1968).

The Trial Court's finding of a valid special assessment was incorrect, it was unsupported by the facts of this case, it was not in accord with the law in this area, and it should be reversed.

POINT II

THE EXCLUSION OF RESIDENTIAL PARCELS AND HOUSES OF WORSHIP FROM THE AD VALOREM ASSESSMENT, AND THE PROVISION OF DEFERRABLE ASSESSMENTS TO ONLY CERTAIN CLASSES OF COMMERCIAL PARCELS VIOLATE EQUAL PROTECTION GUARANTEES.

The City attempts to justify its arbitrary exclusion from assessment of residential parcels and houses of worship (the "Excluded Parcels") with self-serving statements of no special benefit. These statements are unsupported by the Trial Court's record.

The City's own consultant testified at the Validation Hearing that these exclusions were provided to avoid any obstacles to the implementation of the Visions 90 Program. (App.-S.: V.I T.3 P.142).

It was further established that the idea for these exclusions came from case studies in other cities, and not from an analysis of the benefits, projects, and parcels involved in this case. (App.-S.: V.I T.3 P.140).

With this kind of factual basis, it is hard to conceive how the City could have possibly determined that no special benefit inured to the Excluded Parcels.

The Excluded Parcels are no differently situated than other parcels which are subject to assessment and which cannot make use of the alleged benefits unless they are further developed. If the Excluded Parcels are only sharing in general benefits, then, so too, are parcels such as Astral's which are currently developed and have no need of the increased development rights associated with

the Visions 90 Program, and which are neither abutted by nor within the protective proximity of most of the 25 separate improvement projects.

The City's decision to exclude from assessment residential parcels and houses of worship was an arbitrary and unreasonable one.

So, too, was it arbitrary and unreasonable for the City to provide preferential treatment in the form of Deferrable Assessments to only certain classes of commercial parcels, i.e., small, owner-occupied businesses.

Even the City's consultant believed that this deferred payment plan for owner-occupied businesses had not been used because

... it wasn't reasonable ...

(App.-S.:VI T.3 P.187, 198-199).

It appears however that the City was just, once again, trying to avoid any obstacles to the implementation of the Visions 90 Program. So, those classes of property owners who complained the loudest were silenced by exclusions from or deferments of assessment.

This preferential treatment to only certain classes of property, in the form of exclusions from assessment and Deferrable Assessments, results in arbitrary discrimination and violates the constitutional guarantee of equal protection. Art. XIV, U.S. Const. The assessment must, therefore, be held void.

CONCLUSION

For the reasons stated in Point I of the Answer Brief, the State of Florida respectfully submits that the Trial Court properly found that the City was not authorized under its home rule powers to levy the special assessments to finance the issuance of the Bonds.

The State further respectfully submits, based on the reasons stated in Point I of this Cross-Reply Brief, that the Trial Court erred in finding that the ad valorem assessment proposed by the City to pay for the Bonds is not a tax.

Additionally, the State respectfully submits, that based on the reasons stated in Point II of this Cross-Reply Brief, the Trial Court erred in finding that the parcels which are excluded from the proposed ad valorem assessment would at most receive only insignificant special benefits are, therefore, properly excluded from the assessment.

Therefore, the State respectfully requests this Honorable Court to affirm the decision of the Trial Court denying validation of the Bonds; and to reverse the findings of the Trial Court that the ad valorem assessment, in the form proposed by the City, is not a tax and that the excluded parcels would at most receive only

insignificant special benefits and, are, therefore, properly excluded from the assessment.

Respectfully submitted,
DAVID H. BLUDWORTH
STATE ATTORNEY, 15TH JUDICIAL CIRCUIT

By: 

LESLIE M. RITCH
Assistant State Attorney
Florida Bar No.: 396745
224 Datura Street, Suite 800
West Palm Beach, Florida 33402

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 1st day of JULY, 1991, to:

Frank S. Bartolone, Esquire
City Attorney
201 West Palmetto Park Road
Boca Raton, Florida 33432

Peter L. Dame, Esquire
Squire, Sanders & Dempsey
2100 Florida National Bank Tower
Jacksonville, Florida 32202

Griffith L. Pitcher, Esquire
Squire, Sanders & Dempsey
2100 Florida National Bank Tower
Jacksonville, Florida d 32202

Nancy W. Gregoire, Esquire
Ruden, Barnett, McClosky, Smith
Schuster & Russell, P.A.
Post Office Box 1900
Ft. Lauderdale, Florida 33302

John H. Pelzer, Esquire
Ruden, Barnett, McClosky, Smith
Schuster & Russell, P.A.
Post Office Box 1900
Ft. Lauderdale, Florida 33302

Charles F. Schoech, Esquire
Caldwell & Pacetti
324 Royal Palm Way
Palm Beach, Florida 33480

Leslie M. Ritch
LESLIE M. RITCH